

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

DANNY FLEMMONS,

PLAINTIFF

V.

NO. 3:07CV0164-M-D

LEPHER JENKINS, et al.,

DEFENDANTS

**ORDER OVERRULING OBJECTIONS and ADOPTING
REPORT AND RECOMMENDATION**

The Plaintiff, an inmate, brings this *pro se* complaint pursuant to 42 U.S.C. § 1983. Plaintiff complains about denial of adequate medical treatment regarding contracting an infection in his foot following surgery. Plaintiff was afforded the opportunity to clarify and specifically state his claims at a *Spears* hearing. Following the *Spears* hearing, Magistrate Judge Jerry A. Davis filed a Report and Recommendation on May 20, 2008, recommending dismissal of Plaintiff's claims. The Magistrate Judge suggests that Plaintiff may have stated a negligence claim against only the private physician which is not cognizable in federal court. The claim, however, should be dismissed without prejudice to Plaintiff's right to seek redress in state court. Furthermore, the Magistrate Judge advises that Plaintiff has only stated a negligence claim against Christopher Epps, Lepher Jenkins and Heather Ray—the state actors— which should be dismissed with prejudice. On June 9, 2008, Plaintiff filed Objections to the Report and Recommendation.

The court finds that Plaintiff's arguments are not well-taken and that the objections should be overruled for the reasons stated in the Report and Recommendation, which the court approves and adopts as its opinion.

THEREFORE, it is hereby ORDERED that

1) the Plaintiff's objections to the Report and Recommendation of the United States Magistrate Judge are OVERRULED;

2) the Report and Recommendation is APPROVED and ADOPTED as the opinion of this court;

3) Plaintiff's negligence claim against Defendant Dr. Michael Whitmore is DISMISSED without prejudice;

4) Plaintiff's claims against the remaining Defendants are DISMISSED with prejudice;
and

5) this matter is CLOSED.

SO ORDERED, this the 11th day of June, 2008.

/s/Michael P. Mills
CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI